providers for land-to-mobile traffic.[25] Nor is there usually an incremental charge to the landline customer placing the call. The GTE local exchange companies receive compensation from the CMRS provider under the interconnection arrangements for mobile-to-land traffic.

a. Imbalance of Traffic

As noted in the NPRM at ¶40, "substantially more traffic flows from cellular carriers to LECs than *vice versa*." GTE's best estimate is that approximately 80 percent of the interconnected traffic are calls originated by cellular subscribers that terminate on the LEC's network.[26] GTE agrees that this imbalance is due in part to the cellular subscriber's reluctance to give out a wireless telephone number. Cellular providers often promote the use of pagers and voice mail in connection with cellular service for cost savings. By giving out pager numbers instead of cellular numbers, cellular subscribers can be contacted at a much lower cost than if they paid for the air time charges to answer calls directly. However, as discussed *supra*, even if the interconnection charge were eliminated, it is unlikely to have a material effect on the air time charges that CMRS subscribers will pay.[27]

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25 The GTE telephone companies assess a land-to-pager charge for switch termination.

26 This number varies by market, but the 80/20 relationship represents GTE's average across all markets.

27 By itself, Bill and Keep cannot and will not affect the imbalance of LEC-CMRS traffic because the average LEC-CMRS interconnection charge is less than 10 percent of the average rate CMRS providers charge their customers.

Cellular traffic will continue to remain "out of balance" until cellular subscribers become more willing to accept calls. But as long as lower cost options exist that allow cellular subscribers to be contacted without incurring the considerably higher costs of terminating call air time charges, it is unlikely that traffic will reach a balance of originating-to-terminating traffic. Demographic differences between the subscribers of the two services, such as the mix of business to residence customers, may also contribute to the imbalance.[28]

b. The LECs' inability to recover cost of compensation

As discussed *supra,* GTE supports mutual compensation when certain conditions are present.[29] The most important condition is the LECs' ability to recover the cost of compensation from the cost causers. However, this compensation mechanism is currently under the direction of the state commissions. GTE's local exchange carriers, on their own, cannot embark on a program of cost recovery without state approval of such an action. Like many other LECs, GTE finds itself pulled between competing policies. Although the FCC mandated mutual compensation for interstate interconnection, many existing rate structures at the state level inhibit or restrict LECs from negotiating mutual compensation arrangements with wireless carriers. While the federal mandate is clear, it is equally clear that the majority of

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28 Typically wireline businesses users receive more calls than wireline residential users.

29 Testimony of C. Bailey in Florida Interconnection Docket No. 940235-TL at 11.

CMRS traffic is intrastate and compensated by intrastate rates. Complicating the arrangement is the fact that current networks cannot and do not specifically identify interstate traffic versus intrastate traffic.[30]

In order for mutual compensation to work from both the LEC and the CMRS perspective, CMRS providers and LECs must be willing to approach the state commissions and ask that a recovery mechanism be put in place that would allow LECs to recoup the cost of compensation. Certainly Congress has signaled that it wants the state commissions to play an active role in this process.

In GTE's experience, CMRS providers have not been willing to do this. For example, in a recent Florida Docket on interconnection, a McCaw Cellular (now AT&T Wireless) witness, when asked if McCaw would oppose a mutual compensation scenario whereby the LEC would assess a charge on the landline customer calling the mobile subscriber to compensate the LEC for the amount it pays to McCaw, responded that McCaw would oppose such a scenario.[31]

It appears that CMRS providers want mutual compensation, but without regard to the LEC's ability to recoup the cost of compensation from the cost causer. More simply put, CMRS providers desire mutual compensation but only when it is being paid for by

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[30] In GTE's experience, less than 10 percent of the CMRS providers declare that they use their facilities more than 10 percent for interstate traffic. Therefore, based on these declarations, the majority of CMRS traffic interexchanged with the GTE telephone companies should be regarded as intrastate traffic.

[31] "In the Matter of Investigation into the Rates for Interconnection of Mobile Service Providers with Facilities of Local Exchange Companies" Florida Docket No. 940235-TL Oral Testimony of McCaw Cellular, Kurt Maass, March 27, 1995, Page 129, line 22, through Page 130, line 2.

the shareholders of the LEC. The CMRS providers' interest is served by encouraging land-to-mobile calls, thereby stimulating air time charges to their subscribers. Flat-rated local calls best serve this interest. In further support of this interest, CMRS providers overwhelmingly select the Reverse Billing Option offered by most LECs whereby the CMRS providers pay wireless access usage charges so that the landline subscriber avoids paying toll.

In summary, the issue is not whether mutual compensation can be supported, but whether mutual compensation can be supported with a fair and just recovery mechanism that allows the LEC to recover its costs from the cost causer. While CMRS providers want mutual compensation, in order for mutual compensation to work, LECs must be able to recoup the cost of compensation from the cost causer.

c. Public Disclosure

The NPRM asks to what extent existing LEC-CMRS interconnection arrangements are filed in state tariffs or otherwise publicly disclosed. GTE's CMRS interconnection arrangements are tariffed in the following states: Michigan, South Carolina, Alaska and Florida. The California PUC has ordered the LECs to tariff interconnection in a pending docket. Interconnection arrangements are filed in the states of Ohio, North Carolina and California. In Ohio the filing is publicly disclosed. In addition, there are Affiliate Interest filing requirements[32] in the states of Hawaii, Illinois,

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[32] Affiliated Interest filings disclose all transactions between the LEC and its affiliates. When the LEC has an affiliate CMRS provider, these arrangements are disclosed.

Indiana, Iowa, North Carolina, Oregon, Pennsylvania, Virginia, Washington and Wisconsin.

While as stated *supra*, GTE makes generic contracts with rates available to any interested party, once specific information is included for a specific CMRS provider, the contract is considered proprietary and carefully guarded due to the competitive advantages this information could convey to a third party. In GTE's view, requiring the public filing of proprietary material would serve no good purpose in a competitive marketplace. If the Commission should mandate public disclosure, it would be to the greater detriment of CMRS providers and especially new entrants rather than LECs.[33]

Under the 1996 Act, the public disclosure of interconnection agreements adopted by negotiation or arbitration may be required. This should not, however, prevent the Commission from considering protections that would maintain the confidentiality of proprietary information.[34]

d. Use of FCC tariffs

The NPRM requests information on the extent LEC-CMRS interconnection arrangements make use of provisions in FCC tariffs. In GTE's experience, when CMRS providers require dedicated facilities from the LEC,[35] service is usually ordered from the

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33 The costs of filing information publicly is substantial and many times parties attempt to maneuver this process to their own advantage.

34 47 U.S.C. §252(f).

35 GTE's local exchange carriers do not require CMRS providers to purchase dedicated transport from the LEC. CMRS providers may furnish their own transport, as long as the facilities meet current industry standards.

intrastate or interstate Special Access Tariff. The determination of which tariff is appropriate is based on the percentage of interstate usage indicated by the CMRS provider.[36] In the majority of cases, the facilities are purchased from the intrastate Special Access Tariffs.

2. General Pricing Principles

In the Notice, the Commission considers general principles of cost causation that it believes should govern LEC-CMRS interconnection. GTE addresses the implications of the Commission's tentative pricing conclusions with respect to its authority under the 1996 Act and the need to address such issues in a broader interconnection and pricing reform context. If the Commission decides, nonetheless, to proceed with establishing specific standards for LEC-CMRS interconnection, GTE addresses the relative benefits of the proposed rate structure and pricing principles.

a. Authority to establish pricing guidelines for interconnection under the 1996 Act

As discussed *supra*, one of the obligations required of all LECs by the 1996 Act is a "duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications."[37] The statute also provides a mechanism of

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[36] If the CMRS provider states when ordering service that less than 10 percent of the traffic on the facility will be interstate, the intrastate tariff must be used. If the CMRS provider states that 10 percent or more of the traffic is interstate, the interstate tariff may be used. The same rule applies to all access charges.

[37] 47 U.S.C. §251(b)(5).

voluntary negotiation, mediation and arbitration with the involvement of the state commission.

This Commission's role is specifically, within six months of enactment, to establish regulations to implement the requirements of Section 251. Presumably, this could include general pricing guidelines to govern reciprocal compensation and interconnection between a LEC and a "requesting telecommunications carrier," including CMRS providers. These guidelines, however, must comply with the directives of Section 252(d)(2)(A) which states that for reciprocal compensation to be just and reasonable

> (i) such terms and conditions provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier; and
>
> (ii) such terms and conditions determine such costs on the basis of a reasonable approximation of the additional costs of terminating such calls.[38]

Further, Section 252(d) does not authorize the "Commission or any state commission to engage in any rate regulation proceeding to establish with particularity the additional costs of transporting or terminating calls, or to require carriers to maintain records with respect to the additional costs of such calls."[39] The NPRM, however, in contravention of these statutory requirements, is proposing to mandate the methodologies to be used in the determination of the costs of LEC-CMRS interconnection, pricing structures and

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38 *Id.*

39 47 U.S.C. §252(d)(2)(B)(ii).

billing arrangements to be employed and specific methods for establishing appropriate rate levels.[40]

The Commission, under the authority of the Act, can only set forth general pricing principles and guidelines to be followed by state regulators in reviewing the reasonableness of voluntary interconnection agreements or when arbitrating disputes between interconnection parties. Such guidelines should be limited to ensuring that rates are not excessive or predatory, do not result in cross-subsidization and are generally based on cost causative principles and are non-discriminatory.

Indeed, the Notice suggests several pricing and costing standards which could be employed, such as the pricing of interconnection services based on long run incremental costs plus a reasonable share of shared facility and overhead costs. However, the specific level of such overhead allocations and the resulting pricing structure which recovers such costs, cannot be prescribed by the Commission. GTE urges the Commission to focus its efforts in this area on establishing sound economic pricing standards which should govern interconnection arrangements but to allow the parties involved to employ those specific applications and methodologies that fit their needs.

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40 The 1996 Act calls for mutually agreed-upon reciprocal compensation agreements. To the extent that carriers cannot agree on the terms of such arrangements, state commissions are obligated to arbitrate these disputes. To mandate a specific rate application and cost recovery structure -- be it bill and keep, access charges or any other pricing scheme -- would contravene the very specific direction of the statute and would preclude the use of free and flexible negotiations, the proposals are beyond the Commission's authority.

b. LEC-CMRS interconnection pricing policies must be considered with other underlying telecommunications issues

Policies governing the pricing of Interconnection services, however, cannot be viewed in isolation. Prices for all telecommunications services must be designed to meet the needs of an increasingly competitive and converged marketplace. All prices should be derived from the market forces of supply and demand, with assurance that all services will be priced above their incremental cost to avoid cross-subsidization. LEC-CMRS interconnection must be consistent with these larger interconnection issues.

If the Commission wishes to promote genuine competition for local exchange services, it must not directly or indirectly offer one firm or firms an advantage vis-a-vis another firm or firms. Promotion of competitive markets may be difficult to accomplish in practice, but it is most likely to be achieved successfully when all firms offering substitutable services for another's services are subjected to the same requirements. Regulatory parity and symmetric pricing flexibility are essential in any competitive market.

LECs must be allowed to rebalance and deaverage their existing rates. Current pricing structures which encompass implicit and explicit subsidies encourage arbitrage and send uneconomic signals to the marketplace. Without rebalancing, actions like those proposed in the instant proceeding will end up squeezing the LECs into even more uneconomic situations, exasperating genuine regulatory reform.

Accordingly, it is paramount that the Commission conduct parallel rulemakings for general interconnection guidelines, Universal Service obligations and access charge reform. In addition, state commissions must be urged to enact similar measures which provide LECs the ability to establish efficient prices for all local and intrastate toll services which properly reflect the new competitive environment that the 1996 Act envisions.

Clearly, an isolated proceeding, addressing just LEC-CMRS interconnection, not including state commissions, will not produce coordinated results. It is for precisely these reasons that GTE urges the Commission to incorporate LEC-CMRS interconnection issues into a broader interconnection proceeding. The Commission must consider the complete picture -- interconnection by all parties in the public switched network and all access structures -- if it is to have any real or lasting impact on competition. To address only LEC-CMRS interconnection is, at best, to delay beneficial interconnection policies and, at worst, to set in place a form of asymmetrical regulation that will haunt the industry for many years to come. It is unlikely that any minor benefit to this small but growing portion of the public switched network can justify the damage to the Commission's long standing policies of regulatory parity and overall fairness that this instant proceeding is capable of inflicting.

c. Rate structures

To the extent that the Commission proceeds under its authority to establish guidelines under Section 251 for pricing standards, it is essential that the Commission assure that costs of interconnection be recovered from the cost causer based upon a rational pricing structure. The NPRM (at ¶42) endorses, in general, the Commission's long-standing policy that "costs should be recovered in a manner that reflects the way they are incurred." GTE believes that a rational pricing structure allows a carrier to recover the costs of terminating traffic from the originator while still sending the proper pricing signals to the competitive market.[41]

The NPRM seeks comment on the feasibility of using time-of-day (*i.e.*, peak/off-peak) pricing in LEC-CMRS compensation. GTE agrees that time-of-day pricing may often be used as a valid component of an efficient overall pricing mechanism. However, as the NPRM notes (at ¶45), there are practical problems in implementing a peak sensitive pricing system. Peak traffic volumes are often dynamic in that they may differ markedly by service, service providers and geography. Requiring time of day pricing for all agreements would tend to increase administrative costs and to hamper the voluntary good faith negotiation process. It has been GTE's experience that when it is in the interest of both parties to negotiate peak/off-peak pricing, the marketplace will reflect it.[42] In the spirit of the 1996 Act, such matters should be driven by the marketplace, not by regulatory fiat.

Additionally, the NPRM invites comments (at ¶46) on how shared facilities, such as land, buildings and other costs that do not vary with capacity, should be recovered and how differences in costs across geographic areas should be taken into account. In GTE's opinion the recovery of shared facilities costs must be accomplished in an

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[41] *See* Testimony of Dr. Edward Beauvais "The Appropriate Regulatory Framework For Creating A Communications Infrastructure for Hawaii" filed in Docket No. 7702. (Excerpts in Attachment B)

[42] GTE offers peak/off-peak pricing in Florida and California.

efficient manner that establishes the proper economic signals in the marketplace.[43] While the extent to which certain services recover the costs of shared facilities will vary, driven by market demand, it is appropriate for all services, including prices for both peak and off-peak traffic, to include a contribution to these costs.

GTE also believes that costs vary substantially by geographic area which should be reflected in a carrier's pricing structure.[44] Geographic deaveraging recognizes the cost differences of providing service to different areas. More importantly, geographic deaveraging removes an uneconomic signal in the marketplace. When rates are averaged, by definition, some subscribers will be paying higher rates than would be established if rates were based only on costs for that subset. This may encourage carriers to enter markets they would have otherwise avoided had price levels of the incumbent reflected its true underlying costs. Competitive markets function best with the least number of distortions -- geographic deaveraging of prices will minimize these effects.

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43 While Dr. Gerald Brock states that the cost of carrying off-peak traffic may be "very near zero," this is only possible if these costs ignore any form of contribution to the common cost involved in operating the local exchange network. What Brock fails to consider is the critical need for LEC price rebalancing. It is fundamentally unfair to require economic pricing where it will hurt LECs and prevent similar economic pricing where it will help LECs. Prior to removing a source of contribution to LEC overhead costs, the Commission must make certain that other sources are adequate to assure the financial health of the entity.

44 *See* GTE Telephone Operating Companies' Petition for Waiver of Part 69 Rules to Geographically Deaverage Switched Access Services, filed, November 27, 1995. ("ZonePlus Petition)

In summary, LECs and CMRS providers should be allowed to develop agreements incorporating rate structures representing the most efficient means of achieving reciprocal compensation between the parties. While time-of-day pricing certainly must be made available as a valid pricing option, it cannot be forced upon the parties as the only rational pricing scheme.

d. Setting of rate levels based on Long Run Incremental Costs

As the NPRM notes (at ¶47), a sound theoretical foundation for efficient pricing of interconnection and other network services is one based on long run incremental cost ("LRIC"). As the Commission observes, however, prices must be set above LRIC in order to provide some contribution for joint and common costs. In reality, no firm can remain viable in a market if all of its prices only recover LRIC. Without a contribution to its joint and common costs, including a fair return for shareholders, no company would be able to attract the capital necessary to grow and expand. Therefore, any LEC-CMRS interconnection pricing must include some contribution levels, as do other LEC service offerings.

The Commission correctly concludes that it is necessary for carriers to recover some level of costs above LRIC and suggests several means by which these costs could be determined or at least approximated in a manner which would minimize economic distortions. Optimally, pricing in competitive markets should be demand driven. By letting market forces determine the level to which individual services contribute to embedded costs, a competitive market will develop sooner than by dictating one specific and/or arbitrary cost allocation schemes .

One approach considered in the NPRM is to allow interconnection rates to be set solely at LRIC, with common costs recovered through rates for vertical services. If interconnection rates were to be set equal to LRIC, the resulting rates for other discretionary services, such as vertical services, would likely have to be set at levels too high to be sustainable in the market, thereby introducing a secondary price distortion. The end result would be to give CMRS providers an artificial incentive to self-provision discretionary services that they may not have chosen to do if this distortion had not imposed by regulation. Even though it is possible that market forces could push prices for some highly competitive services downward toward their incremental cost, price levels should never be required by regulation to be set at LRIC.

The Notice also suggests several other methods which could be employed to recover shared costs and overhead in excess of LRIC. The standard Ramsey pricing model allocates common costs in an inverse relation to the price elasticity of demand. Even though this will result in the customers with the fewest options having the highest prices, it encourages competition. By pricing services above cost, the margins on these services will attract competitive entry by others. However, a pure Ramsey pricing approach, one that takes into account cross-elastic effects (*i.e.*, entrant's stand-alone cost) is difficult, if not impossible, to quantify.

Allocations and apportionments are, by definition, always arbitrary and never economically efficient. Therefore, it makes no economic sense for regulators, LECs or

CMRS providers to insist that all common costs and overheads be allocated among all services based on some specified allocator. In an emerging competitive market, it should be expected that some products should recover more overheads than others. Again, market forces, not regulation, should determine how much overhead a service bears.

The Efficient Component Pricing Rule ("ECPR") is an effective mechanism for services that are being unbundled for a competitive environment. ECPR allows for the recovery of costs above LRIC based on the true economic or "opportunity cost" to the LEC of selling an unbundled input. Pricing based on the ECPR is complicated by the need to determine exactly how to compute opportunity cost. This approach essentially sets a cap on opportunity cost equal to what it would cost a potential competitor to provide the service from scratch. Thus, prices set within a range above LRIC, but below the ECPR cap, can be effective in a competitive environment. GTE believes use of the ECPR could be appropriate in determining rate levels for any type of interconnection arrangement.

An approach which would set reciprocal compensation rates within some permissible range of rates, as the Commission suggests, may be workable as a general guideline or as a test of reasonableness to be used by a state commission in arbitration to ensure against cross-subsidization. The most practical approach suggested in the NPRM would be to simply demonstrate that the revenue from each service exceeds the incremental cost of the service. However, as is the case with many of the proposals advanced in the NPRM, imposition of a single ratemaking practice would only serve to limit the range of acceptable arrangements available to negotiating parties.

Finally, the NPRM seeks comment on how LEC-CMRS interconnection rate levels would affect telecommunications network subscribership and universal service. The issue of universal service is important and deserves careful examination. The 1996 Act clearly requires that all telecommunications providers, including CMRS providers, must support universal service.[45] Since the Commission must initiate a specific proceeding to address how to accomplish the universal service changes in the Act, GTE urges the Commission to avoid possible duplication by addressing LEC-CMRS universal services issues within that larger proceeding. Any attempt to resolve these issues in the instant proceeding may result in policies that are not in harmony with the larger telecommunications issues.

e. Practical considerations regarding cost-based pricing

The NPRM suggests that interconnection rates could be based on a specific demonstration of the costs of providing service, in a manner similar to the way new service prices are justified under the existing price cap rules. Certainly, this approach could be used to develop and support prices offered during interconnection agreement negotiations. If disputed, it would be the carrier's responsibility to demonstrate the reasonableness of cost assignments (including contribution to joint and common costs) and allocations in arbitration.

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[45] 47 U.S.C. §254(b)(4).

GTE believes that each of the pricing proposals advanced in the NPRM has some theoretical and administrative shortcomings. It is imperative, therefore, that LECs and CMRS providers must be afforded the flexibility to agree to a common approach, consistent with the 1996 Act.

f. The Bill and Keep proposal must be rejected in light of the 1996 Act

As discussed *supra*, the 1996 Act is all-encompassing, mandating a specific interconnection procedure for LEC interconnection with other telecommunications carriers. The statute does not anticipate a different interconnection treatment for CMRS or exclude LEC-CMRS interconnection arrangements from the scope of the interconnection requirements. Moreover, the tentative proposal in the NPRM mandating Bill and Keep is in conflict with the new statutory direction. Cost-based mutual compensation is now the standard for all exchange interconnection arrangements. Although Bill and Keep interconnection arrangements are not precluded under Section 252(d)(2)(B), there is no authority for the Commission to impose a Bill and Keep requirement, even for a interim period.

Furthermore, the NPRM (¶67-75) suggests other pricing options as well. GTE believes that, as with Bill and Keep, the Commission lacks the authority to impose these other options.

g. Even if permissible, Bill and Keep is not appropriate for LEC-CMRS interconnection

Although the NPRM (at ¶61) cites advantages of Bill and Keep, disadvantages must also be noted. There will be proper and symmetrical compensation only when parties' costs are approximately the same and the traffic balances are equal. This generally happens when the parties have similar network configurations, equipment and common costs of doing business. LECs and CMRS providers do not meet these predicates. Thus, symmetrical interconnection rates between LECs and CMRS providers will rarely be appropriate. Interconnection rates, in order to be sustainable in competitive markets must be cost based. Until it can be demonstrated that LECs and CMRS providers have approximately equal costs of interconnection, symmetrical rates will result in market distortions.

GTE opposes mutual compensation for paging carriers. In order to be eligible for mutual compensation, or Bill and Keep, carriers should be in the business of providing exchange service, both the origination and termination of traffic, and should offer service that is a substitute for exchange service, not an ancillary service. Paging service is totally dependent upon the local exchange system. If a service cannot be provided without the underlying exchange service, it should not be eligible for mutual compensation.

There is no need, as the NPRM suggests, to single out one group for special treatment to ensure their continued development. CMRS providers have enjoyed phenomenal growth. The current interconnection arrangements have not stunted the growth of wireless services[46] nor will mandating a Bill and Keep compensation arrangement significantly benefit CMRS services. Because interconnection costs are only a small component of the total costs of providing a wireless service,[47] a Bill and Keep arrangement cannot ensure the "continued development of wireless services as a potential competitor to LEC services." However, mandating a Bill and Keep arrangement, even for an interim period, could have a significant impact on other FCC policies and cause great harm to the existing interconnection arrangements

h. At most, Bill and Keep should only be used for a finite interim period after safeguards are assured

In any case, the Commission should give no consideration to imposing a compensation arrangement of any sort for an indefinite period. Any Commission decision should be limited to a date certain. It should certainly not to be tied to an occurrence or event that can be manipulated by parties. Otherwise interconnection issues will become a political matter rather than a matter of rational policy.[48] Under normal times, this would be bad policy, but considering the scarcity of resources, both within the Commission and in the industry, to meet the aggressive schedule established in the 1996 Act, a specific interim period must be established in advance.

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[46] Many existing CMRS providers are parts of the largest communications companies. Even new entrants have strong ties to companies with substantial resources.

[47] The average LEC-CMRS interconnection charge is less than 10 percent of the average rate CMRS providers charge their customers -- approximately three cents a minute as compared to thirty cents a minute for air time charges.

[48] Changing to and from an interim to a permanent solution will also be costly.

Moreover, if the Commission implements Bill and Keep for CMRS providers, it must adopt some form of effective protection against arbitrage and must impose some limits so that further pricing distortions are not created. Under today's network configurations, it will be virtually impossible to police compliance with a Bill and Keep arrangement for strictly CMRS traffic. The largest interexchange carrier, AT&T, is also the largest CMRS provider. When CMRS traffic is terminated without charging the party and IXC traffic is subject to Part 69 access charges, it is clear that a party providing both services will have an incentive to claim to be wireless as much of the traffic as possible regardless of its actual nature. At a minimum, the Commission should require CMRS providers to attest that only terminating local exchange CMRS traffic and not "deflected traffic" subject to Part 69 access charges is being interexchanged under these agreements. Such attestation should include tough penalties for willful misstatements. Although GTE believes safeguards are necessary, the LECs should not be required to incur additional costs to assure compliance.

As stated earlier, a mandated compensation plan such as Bill and Keep would require a complete rewrite of all existing contracts. Simply changing prices in the existing arrangements upsets the balance that had been obtained through the good faith negotiation process.[49] This would entail substantial costs to both the LEC and the CMRS providers, and would take years to complete. The instant relief that the

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49 The rate for termination of traffic is just one element of an agreement that offers numerous benefits to both parties.

Commission envisions for CMRS providers may in fact require time and resources that could be better spent on building infrastructures and introducing new services.

In both the long term and the short term, sound policy requires that CMRS interconnectors should be treated, in principle, the same as other interconnectors that obtain essentially the same LEC services under the same circumstances. To do otherwise, would create price distortions in the marketplace that would have numerous unintended results. Special treatment would harm not only the LECs but new competitors coming to the local service marketplace with technologies that are not spectrum based. GTE firmly believes that the marketplace should decide which firms succeed, not arbitrary Commission policies.

B. Implementation of Compensation Arrangements

1. Negotiations and Tariffing

GTE has supported "good faith negotiations" instead of rigid tariff requirements because negotiations, coupled with proper safeguards, produce better overall arrangements for both LECs and CMRS providers. As stated *supra*, GTE's local exchange carriers offer CMRS providers the same rates, terms and conditions for similar services.[50] The very fact that there have been few if any formal complaints filed by CMRS providers makes the Commission's claim that LECs have an "imbalance in

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[50] As discussed *supra*, GTE's local exchange carriers do not delay the provisioning of basic interconnection until after the negotiations are completed, but will establish the service at the earliest opportunity subject to the terms of the final negotiation.

negotiating power" ring hollow. Certainly, the past success and phenomenal growth of CMRS providers over the last several years challenge the supposition that CMRS providers have been harmed by LEC interconnection arrangements. Moreover, without clear evidence of abuse of the existing processes, the NPRM fails to justify the rigid mandate of a Bill and Keep arrangement. GTE believes that the Commission is rushing to judgment on the basis of anecdotal and hearsay evidence.

The Commission's concern that, because CMRS providers will compete with LECs, LECs will not willingly pursue interconnection, is not in accord with the realties in the marketplace. In most of the major markets, CMRS providers have a choice in how they design their networks and with whom they interconnect.[51] It is GTE's experience that most LECs want to interconnect with CMRS providers. CMRS providers are important customers and most LECs want to keep this business on their facilities rather than losing the traffic to another provider. Thus, the Commission's characterization of an imbalance of power favoring LECs is not supported by hard evidence.[52]

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[51] Current interconnection arrangements are often incompatible and present an opportunity for parties to arbitrage one arrangement over another, *e.g.*, EAS versus formal interconnection arrangements. GTE's proposal for a comprehensive reform of all interconnection arrangements would provide the vehicle to close these regulatory loopholes.

[52] If there where a small number of complaints alleging abuse, the Commission could effectively handle these issues under its compliant rules, thereby avoid all the distortions that Bill and Keep will inflict on the marketplace. By doing so, the Commission would allow the marketplace to function in the vast majority of arrangements that have not generated concerns.

GTE telephone companies currently negotiate customized arrangements[53] with CMRS providers which provide more flexibility and meet individual needs of CMRS providers. These arrangements have been well received by the majority of CMRS providers and in many instances have contributed to the CMRS providers ability to implement wide-calling areas and special service offerings to their subscribers. Mandating Bill and Keep will upset the balance established through these individually negotiated agreements -- voluntary agreements now fully endorsed by the 1996 Act.

2. Jurisdictional Issues

In Part I *supra*, GTE argues that the Commission lacks jurisdiction under the recently enacted Telecommunications Act of 1996 to mandate the compensation arrangement proposed in the NPRM. The 1996 Act sets forth a new legal regime that governs LEC-CMRS interconnection. The Commission's proposal to mandate an interconnection arrangement, and specifically a Bill and Keep arrangement for interconnected traffic, is incompatible with that regime. Accordingly, the Commission should abandon this NPRM and should instead consider LEC-CMRS interconnection within the context of, and subject to the substantive restrictions on, a proceeding implemented pursuant to new Section 251(d)(1).

Now that the 1996 Act has become law, the question whether Section 332(c) preempts state regulation of LEC-CMRS interconnection is largely beside the point. The important question is not how Section 332(c) interacts with state law, but how it

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53 *See* Attachment A.

interacts with the 1996 Act. The NPRM (at ¶108-109) proposes three alternatives for the federal interconnection policy. An informal model would govern LEC-CMRS interconnection for interstate services and would serve as a model for intrastate service. A mandatory framework model would govern both interstate and intrastate interconnection while allowing the states to implement specifics. The specific model would set forth specific federal requirements for interstate and intrastate LEC-CMRS interconnection. In considering any of these models, the Commission must adopt a framework that fits with the mandate of Section 252.

The mandatory model comes close to the statutory scheme established in Section 252 in that it contemplates federal policy directives that then would be implemented by the state commissions, but it is different than the voluntary negotiation, mediation and arbitration mechanism developed in the 1996 Act. Because an agency cannot contravene the statute that it is charged to implement, a mandated LEC-CMRS interconnection plan that does not comply with Section 252 is beyond the jurisdiction of the Commission.

CONCLUSION

GTE believes that the NPRM is fundamentally inconsistent with the 1996 Act which sets forth a new legal regime that governs LEC-CMRS interconnection. The Commission's proposal to mandate a Bill and Keep arrangement for interconnected traffic is incompatible with that regime and is therefore beyond the Commission's jurisdiction. Accordingly, the Commission should terminate this narrowly focused proceeding or should consider LEC-CMRS interconnection with the broader and more far-reaching changes to its common carrier regulation that the Commission must implement as a result of the legislation, including those that involve universal service and access reform.

Respectfully submitted,

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